

State of New Hampshire
Division of Plant and Property Management
Bureau of Purchase and Property, Room 102
25 Capitol Street, State House Annex
Concord, N.H. 03301-6398

Date: JULY 12/2004
Proposal No.: #31
Date of Proposal Opening: August 31, 2004
Time of RFP Opening: 2:00 P.M.

PLEASE DIRECT ANY QUESTIONS REGARDING THIS PROPOSAL TO: Gary W Deragon
TEL NO. (603)271-3148

PROPOSAL FOR: PROVIDE SNOW AND ICE REMOVAL SERVICES FOR SEVERAL STATE FACILITIES LOCATED ON HAZEN DRIVE, CONCORD, NEW HAMPSHIRE. 03301

Unless specifically deleted by the Division of Plant and Property Management, the following General Terms and Conditions apply to this Proposal and any resulting Contract.

**GENERAL TERMS AND CONDITIONS
FOR SERVICES**

NATURE OF PROPOSAL AND ELIGIBILITY TO BID. The proposal is submitted in accordance with Chapter 21-I and Chapter 8, and rules promulgated thereunder, and constitutes a firm and binding offer. The determination of whether a bid proposal may be withdrawn is solely at the discretion of the Director of Plant and Property Management. However, in no event shall a proposal be withdrawn unless the request for withdrawal is filed within five days of the date of the bid opening, and the bidder establishes that the bid contains a material mistake, and that the mistake occurred despite the exercise of reasonable care.

Proposals may be issued only by the Division of Plant and Property Management to authorized vendors and are not transferable.

BIDS. Bids must be received at the Division of Plant and Property Management before the date and time specified for the opening. Bids must be made on the official bid proposal and must be typed or clearly printed in ink. Corrections must be initialed. Bids are to be made less Federal Exercise Tax and no charge for handling. Bids that are not complete or unsigned will not be considered.

Bids will be made public at the time of the opening and may be reviewed, only after they have been properly recorded. Bid results will not be given by telephone and shall be given by mail only if requested in writing and accompanied by a self-addressed, stamped business size envelope.

SPECIFICATIONS: Vendors must bid as specified. Any proposed changes must be detailed in writing and received at the Division of Plant and Property Management at least five (5) days prior to bid opening. Vendors shall be notified in writing if any changes to bid specifications are made. Verbal agreements or instructions from any source are not authorized.

AWARD: The award will be made to the responsible bidder meeting specifications at the lowest cost unless other criteria are noted in the proposal. Unless otherwise noted in the proposal, the award may be made by individual items. The State reserves the right to reject any or all bids or any part thereof.

If there is a discrepancy between the unit price and the extension the unit price will prevail.

When identical low bids are received with respect to price, award will be made by drawn lot.

Discounts will not be considered in making award but may be offered on the invoice for earlier payment and will be applicable on the date of completion of delivery or receipt of invoice, whichever is later. On orders specifying split deliveries, discounts will apply on the basis of each delivery or receipt of invoice, whichever is later.

INVOICING. All invoices must be in triplicate showing Contract Number, Unit and Extension Prices and discounts allowed.

PATENT INFRINGEMENT. Any bidder who has reason to believe that any other bidder will violate a patent should such bidder be awarded the contract shall set forth in writing, prior to the date and time of bid opening, the grounds for his belief and a detailed description of the patent.

ASSIGNMENT PROVISION. The contractor/vendor hereby agrees that it will assign all causes of action that it may acquire under the antitrust laws of New Hampshire and the United States as the result of conspiracies, combinations, or contracts in restraint of trade which affect the price of services obtained by the state under this contract if so requested by the State of New Hampshire.

FEDERAL FUNDS. The Division of Plant and Property Management, as the delegated enforcement agency of RSA 21-I:14, VIII for the Commissioner's Office, shall assure the continuation or granting of federal funds or other assistance not otherwise provided for by law by following the standards set forth in Attachment O, Circular No. A-102, paragraphs 7,8 and 9 of the Federal Procurement Standards.

TOXIC SUBSTANCES. In compliance with RSA 277-A known as the Workers Right to Know Act, the vendor shall provide Material Safety Data Sheets with the delivery of any and all products covered by said law.

SPECIFICATION COMPLIANCE. The vendor may be required to supply proof of compliance with the bid specifications. When requested, the vendor must immediately supply the Bureau of Purchase and Property with certified test results or certificates of compliance. Where none are available, the State may require independent laboratory testing. All costs for such testing, certified test results or certificate of compliance shall be the responsibility of the Vendor.

OFFER. The undersigned hereby offers to sell to the State of New Hampshire the services indicated in the following page(s) of this Proposal at the price(s) quoted in complete accordance with all conditions of this Proposal.

Bidder: _____

Address: _____

Tel. #. _____

By: _____

**THIS BID MUST BE SIGNED BY A PERSON
AUTHORIZED TO LEGALLY BIND THE BIDDER**

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ADMINISTRATIVE SERVICES
BUREAU OF GENERAL SERVICES

BID FOR: SNOW & ICE REMOVAL SERVICES

The State of New Hampshire proposes to enter into an agreement with a contractor to provide snow plowing, removal and disposal of snow, sanding and salting as needed to maintain pavement bare as weather will permit, and provide access to the various parking lots during their normal hours of operation. The removal of snow must be accomplished after 9:00 P.M. and before 6:00 A.M. This proposal includes several parking lots as detailed on the attached plans at the below listed areas:

Department of Safety -	33 Hazen Drive
Health & Human Services -	29 Hazen Drive
Dept of Transportation Morton -	1 Hazen Drive
Supreme Court/Admin. Bldg. -	1 Nobel Drive
Fish & Game Dept. -	11 Hazen Drive
Dept. of Safety Testing Bldg.	23 Hazen Drive
Hazen Drive	Hazen Drive.

This project consists of furnishing all labor, transportation, materials and equipment necessary to provide the required level of services as described herein.

The term of any resulting contract shall be for a (4) four-year period beginning November 1, 2004, and ending on October 31, 2008. The agreement may be renewed for an additional term of two years at the same terms and conditions.

MANDATORY SITE VISIT 7 PRE BID CONFERENCE

It is mandatory that all bidders visit the sites specified in this proposal to acquaint themselves with pertinent local conditions such as accessibility, the general character of the sites and knowledge of conditions affecting the work. A Mandatory site visit and pre bid conference will commence at 2:00 P.M. Tuesday August 10, 2004, in the main lobby of the Health & Human Services building located at 29 Hazen Drive, Concord N.H. **Vendor must attend this pre-bid meeting and tour in order to be considered.**

The Contractor shall do all the work and furnish all the materials, tools, equipment and safety devices necessary to perform in the manner and within the time hereinafter specified. He shall complete the entire work to the satisfaction of the State and in accordance with the specifications herein mentioned, at the price herein agreed upon and fixed therefore. All the work, labor and equipment to be done and furnished under this contract, shall be done and furnished strictly pursuant to, and in conformity with the specifications described herein, and the directions of the State representatives as given from time to time during the progress of the work, under the terms of this contract and also in accordance with contract drawings.

The Contractor shall conduct his work so as to interfere as little as possible with State business. He shall at his own expense, wherever necessary or required, furnish safety devices and take such other precautions as may be necessary to protect life and property.

The Contractor shall take all responsibility for the work under this contract; for the protection of the work; and for preventing injuries to persons and damage to property and utilities on or about the work. He shall in no way be relieved of his responsibility by any right of the State to give permission or issue orders relating to any part of the work; or by any such permission given on orders issued or by failure of the State to give such permission or issue such orders. The Contractor shall bear all losses resulting to him or to the Owner on account of the amount or character of the work, or because of the nature of the area in or on which the work is done is differed from what was estimated or expected, or account of the weather, elements or other causes.

The Contractor agrees to assign a Supervisor to review the daily parking lot and road conditions to insure that the road conditions meet the requirements of this agreement.

The Contractor agrees that any damage or injury to buildings, materials, and equipment or to other property during the performance of this service will be repaired at their own expense.

Prior to the first snowfall to avoid the possibility of damaging curbing, shrubs, manholes, cyclone fencing, aluminum rail fencing, guard rails, electrical junction boxes and any other areas that are susceptible to damage because they are easily concealed by snowfall shall be staked out (clearly marked/identified) by the Contractor. The Contractor shall not commence work until a conference is held at which representatives of the Contractor, and the State are present. The conference will be arranged by the State.

Plowing is to be started within one (1) hour after the accumulation of snow is greater than two inches.

The parking lots are in use Sunday through Saturday between 6:00 A.M. and 9:00 P.M.

All parking lots shall be plowed and cleared of snow after 9:00 P.M. and before 6:00 A.M. All other snow deposited in the parking lots, entrances and exits shall be plowed and removed one hour before operation.

Removal of snow will be accomplished after the hours of use, between the hours of 9:00 P.M. and 6:00 A.M. If the storm is of such intensity as to require removal during the hours of operation of the parking areas, the Contractor may do so after the approval of the Contracting Officer.

Salting and sanding to be accomplished as needed, or on request. The Contractor shall maintain a bare pavement policy on all areas. This should be accomplished with the use of road salt or other acceptable method as approved by the State.

Equipment and Labor Requirements:

The Contractor shall furnish trucks, rubber tired front-end loaders; salt/sand spreaders and other equipment., i.e., frame, hoists, and plows as specified herein suitable for snow plowing, snow removal and salting/sanding together with the necessary drivers for the same.

The Contractor shall furnish trucks and equipment in numbers herein specified or as may be required from time to time for snow plowing or snow removal purposes. The Contractor shall furnish with each separate piece of equipment, capable licensed drivers in sufficient numbers so as to operate the equipment efficiently. He shall furnish additional drivers to relieve the regular drivers when extended periods of work require.

The equipment, before being accepted for actual work, must be in proper mechanical conditions, and fully equipped as required, for efficient operation; must be properly registered and insured in accordance with the laws of the State of New Hampshire; and be equipped with accessories as required to meet the existing traffic conditions.

Minimum Equipment Required:

- 1) 2- 6 Wheel trucks GVW of 36,220 Lbs. With plows and wing plows.
- 2) 2- 2 axle trucks 4 wheel drive, with a minimum GVW of 8,500 lbs.
- 3) 3- Rubber tired front-end loader's with plows and wing plows with a minimum 2 cu. yd. capacity bucket loader.
- 4) 1-Ten yard and 1-Five yard - Mechanical salt/sand spreaders or any combination of the two.
- 5) Or any combination of equipment acceptable to the State.

The Contractor shall employ only competent people to do the work, and whenever the Contracting Officer shall notify the Contractor that any person working, in their opinion, is incompetent, unfaithful, disorderly, or otherwise unsatisfactory, such person shall be replaced and shall not be again employed except with the consent of the State. All equipment shall be garaged within twenty (20) miles of Concord.

The State reserves the right to hire equipment other than from the Contractor if the Contractor's equipment does not report ready for service within one (1) hour of the time ordered. When such equipment, other than the Contractor's is employed, any expense incurred above the contract price shall be borne by the Contractor and such additional expense shall be deducted from any money due the Contractor.

The Contractor shall be required to supply the Contracting Officer with the name and telephone number of the Contractor's representative who will be on call in case of emergency twenty-four (24) hours a day.

Equipment Inventory List

List of equipment proposed to be furnished by the undersigned on this proposal for snow plowing, snow and ice removal and salting and sanding.

TRUCKS	QUANTITY	YEAR	MAKE	CAP.	BLADE SIZE	REG #	ADDRESS GARAGED DURING <u>CONTRACT</u>
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GVW 32,220
lbs. Truck_____

GVW 12,000
lbs. Truck_____

GVW 10,000
lbs. Truck_____

GVW 8,500
lbs. Truck_____

GVW 8,500
lbs. Truck_____

Rubber Tired
Front End
Loaders, with plows 2
c.y._____

Rubber Tired
Front End
Loaders, with plows 2
c.y._____

Salt/Sand Spreader _____
10 c.y.

Salt/Sand Spreader _____
5 c.y.

Other _____

Name, address and telephone number of Contractor's agent who is on twenty-four (24) hour call.

NAME _____

ADDRESS _____

TELEPHONE _____

List three references and contact personnel that your firm has performed similar work for.

1. _____

2. _____

3. _____

BIDS:

Before submitting a bid, each vendor shall visit the sites and be responsible for having ascertained pertinent local conditions, such as the general character of the site and knowledge of conditions affecting the work. The act of submitting a bid is to be considered full acknowledgement that the vendor has inspected the sites and is familiar with the conditions and requirements of these specifications. Arrangements to visit the respective sites can be made by calling Bill Hubbard a minimum of 24 hours in advance at (603) 271-3231.

Please execute and return one (1) copy of this bid.

Bids will be made public at the time of award and may be reviewed, only after they have been properly recorded. Bid results will not be given by telephone and shall be given by mail only if requested in writing and accompanied by a self-addressed, stamped, stamped business size envelope.

The time and effort expended in bid preparation is entirely the responsibility of the bidder.

Requests for any changes in this bid must be submitted in writing to the Bureau of Purchase and Property, 25 Capitol Street, Room 102, Concord, New Hampshire, 03301 on or before **September** .

Award Consideration:

Bids will only be considered from contractors that have the equipment necessary to perform the work and a satisfactory record of performance.

The contract shall be awarded on the basis of the lowest gross bid meeting specifications for all thirteen locations. The gross bid must be the exact additive total of the bids on all locations. The contract will be awarded on a three (3) year basis. The State reserves the right to reject any or all bids or any part thereof.

The State of New Hampshire reserves the right to remove one (1) or more of the locations from the project at the price quoted in the bid with the remaining locations serviced at the individually quoted prices.

Any agreement that may result from this proposal shall not be binding on either party until it has been approved by the New Hampshire Governor and Council.

Payment Terms:

Payment shall be paid in full within thirty (30) days after receipt of a properly documented invoice and acceptance of the work to the State's satisfaction. The Contractor shall invoice the State with five (5) equal monthly installments per year in the months of December, January, February, March and April.

Bid Bond or Security:

A bid bond or security in the amount of **Five Hundred Dollars (\$500.00)** shall be submitted with the bid. Failure to submit this security shall be cause for bid rejection. Bidders, at their option, shall furnish a certified check, or bid bond as security in the amount required.

Securities submitted by unsuccessful bidders will be returned as soon as practical after the bid opening date.

Performance Bond or Security:

The successful bidder shall be required to furnish a performance bond or security payment in the amount of **Five Thousand Dollars (\$5,000)** within five (5) business days of notice of award. The successful bidder shall furnish a certified check, a letter or credit from a New Hampshire bank, or performance bond as security in the amount required. All checks shall be deposited in a non-interest bearing account.

Insurance:

The successful bidder shall furnish to the Contracting Officer, prior to the start of any work, insurance certificates for comprehensive general liability, automobile liability and worker's compensation in accordance with the attached sheet.

The form contract included as Form A with this bid shall be part of the vendor's bid and shall be separately executed by the State and the contractor without alterations to evidence any contract awarded to the Contractor.

OFFER: The undersigned hereby offers to perform the services to the State of New Hampshire as specified at the prices quoted below, in complete accordance with general and detailed specifications included herewith.

COST PER SEASON FOR SNOW REMOVAL, PLOWING, SANDING/SALTING

<u>BUILDING</u>	<u>04 - 05 Season</u>	<u>05-06 Season</u>	<u>06-07 Season</u>	<u>07-08 Season</u>
Annual	\$_____	\$_____	\$_____	\$_____
TOTAL		\$_____		

NOTE: BID MUST BE SIGNED ON THE FRONT COVER PAGE (GENERAL TERMS AND CONDITIONS) IF YOUR BID IS TO BE CONSIDERED.

STATE OF NEW HAMPSHIRE
INSURANCE REQUIREMENTS

COVERAGE IS REQUIRED IF CHECKED BELOW MINIMUM LIMITS REQUIRED

COMPREHENSIVE GENERAL LIABILITY

INCLUDING:

- () \$500,000.00
 () \$1,000,000.00
 (X) \$2,000,000.00
 () Other: _____
 (X) Per Occurrence

1. () Fire Legal Liability
2. (X) Broad Form Property Damage
3. (X) Premises Operation
4. (X) Products and Completed Operations
5. (X) Owners and Contractors Protective
6. () Explosion and Collapse
7. () Underground Hazards
8. (X) Independent Contractors
9. () Personal and Advertising Injury

AUTOMOBILE

10. (X) Any Auto () \$250,000/\$500,000/\$100,000
11. () Employee Liability Endorsement () \$500,000/\$1,000,000/\$100,000
12. () Garage Liability (X) \$1,000,000

**13. (X) WORKERS COMPENSATION AND
EMPLOYERS LEGAL LIABILITY**

- (X) N.H. Statutory
 (X) \$100,000 Bodily Injury by
 accident per employee
 () \$100,000 Bodily Injury by
 disease per employee
 () \$500,000 Bodily Injury by
 disease policy limit

14. () Professional Liability () \$1,000,000.00
 () \$2,000,000.00

15. () Builders Risk; With Completed Value,
Replacement Cost Endorsement MINIMUM LIMITS REQUIRED

16. () Installation Floater (Equipment) _____

17. () Riggers Liability (Moving Equipment) _____

18. (X) Other: The State Of New Hampshire
named as an additional insured

FORM A – UNIFORM CONTRACT TERMS

This form contract, which is to be completed by incorporating the service requirements and price conditions established by the vendor's proposal, shall be promptly executed by the successful vendor and the State following notification of award. This contract form shall be part of all proposals and may not be omitted, waived, or modified.

Failure to include Form A in the proposal may result in the rejection of the bid.

Subject: MAINTENANCE AND SERVICE OF MECHANICAL EQUIPMENT FOR SEVEN (7) STATE OWNED FACILITIES.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. Identification and Definitions

1.1 State Agency Name Administrative Services		1.2 State Agency Address 25 Capitol Street, Room 408, Concord, New Hampshire 03301	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Account No.	1.6 Completion Date	1.7 Audit Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency Gary W. Deragon Administrator		1.10 State Agency Telephone Number (603) 271 - 3148	
1.11 Contractor Signature		1.12 Name & Title of Contractor Signor	
1.13 Acknowledgment: State of _____ County of _____ On _____ before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he is executed this document in the capacity indicated in block 1.12			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal]			
1.13.2 Name & Title of Notary Public or Justice of the Peace			
1.14 State Agency Signature (s)		1.15 Name/Title of State Agency Signor(s) Donald S. Hill, Commissioner Dept. of Administrative Services	
1.16 Approval by Department of Personnel (rate of Compensation for Individual Consultants) By: _____ Director, On: _____			
1.17 Approval by Attorney General (Form, Substance and Execution) By: _____ Assistant Attorney General, On: _____			
1.18 Approval by the Governor and Council By: _____ On: _____			
2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("the State"), engages contractor identified in block 1.3 ("the Contractor") to perform, and the Contractor shall perform, that work or sale of goods, or both, identified and more particularly described in EXHIBIT A incorporated herein ("the Services").			
3. EFFECTIVE DATE: COMPLETION OF SERVICES. 3.1 This agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Council of the State of New Hampshire approve this agreement, ("the Effective Date"). 3.2 If the date for commencement in Exhibit A precedes the Effective Date all services performed by Contractor between the commencement date and the Effective Date shall be performed at the sole risk of the contractor and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the contractor for any costs incurred or services performed; however that if this Agreement becomes effective all costs incurred prior to the effective date shall be paid under the terms of this Agreement. All services must be completed by the date specified in block 1.6.			

4. **CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding anything in this agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the account identified in block 1.5 in the event funds in that account are reduced or unavailable.

5. CONTRACT PRICE: LIMITATION ON PRICE: PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in Exhibit B, incorporated herein.

5.2 The payment by the State of the contract price shall be the only, and the complete, reimbursement to the Contractor for all expenses, of whatever nature, incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by RSA 80:7 through 7-C or any other provision of law.

5.4 Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the price limitation set forth in block 1.8 of these general provisions.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS: EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to civil rights and equal opportunity laws. In addition, the vendor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap or national origin and will take affirmative action to prevent such discrimination.

6.3 If this agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States, access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants and conditions of this Agreement.

7. PERSONNEL

7.1 The performance of the Services shall be carried out by employees of the Contractor. The Contractor shall at its own expense, provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Contractor shall not hire, and shall permit no subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final.

8. EVENT OF DEFAULT, REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Events of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule; or

8.1.2 failure to submit any report required hereunder; or

8.1.3 failure to perform any other covenant or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this agreement, effective two (2) days after giving the Contractor notice of termination; and

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor; and

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and

8.2.4 treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

8.2.5 Information Technology Contracts. The Contractor's and the State's monetary liability to one another shall not exceed two times the total contract price, and shall not include consequential damages. This limitation shall not apply to Contractor's indemnification obligations under Paragraph 13 of the General Provisions (Form P-37) or the following:

(a) death or bodily injury and physical damage to real or intangible personal property;

(b) misappropriation or infringement of any intellectual property including but not limited to any patent or copyright or any unauthorized use of any trade secret;

(c) losses accruing to any and all contractors, subcontractors, materials, men, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies to Contractor in connection with the performance of this Agreement;

(d) personal injury;

(e) disclosure of confidential information; or

(f) failure to meet applicable statutes, regulations, codes or guidelines.

This provision shall not be subject to any modification; however, the State may modify the cap on liability, presently set at two times the contract price, for a particular project and any language modifying this provision shall appear in the Request for Proposal.

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

9. DATA: ACCESS; CONFIDENTIALITY; PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 On and after the Effective Date, all data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by RSA 91-A or other existing law. Disclosure pursuant to a right to know request shall require prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion to the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("the Termination Report") describing in detail all Services performed, and the Contract Price earned, to and including the date of termination. To the extent possible, the form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, worker's compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT, DELEGATION AND SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Services shall be delegated or subcontracted by the Contractor without the prior written consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

14. INSURANCE AND BOND.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, both for the benefit of the State, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per incident; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 of these general provisions, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than 10 days after written notice thereof has been received by the State.

15. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that event, or any subsequent Event. No express failure of any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Contractor.

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, above.

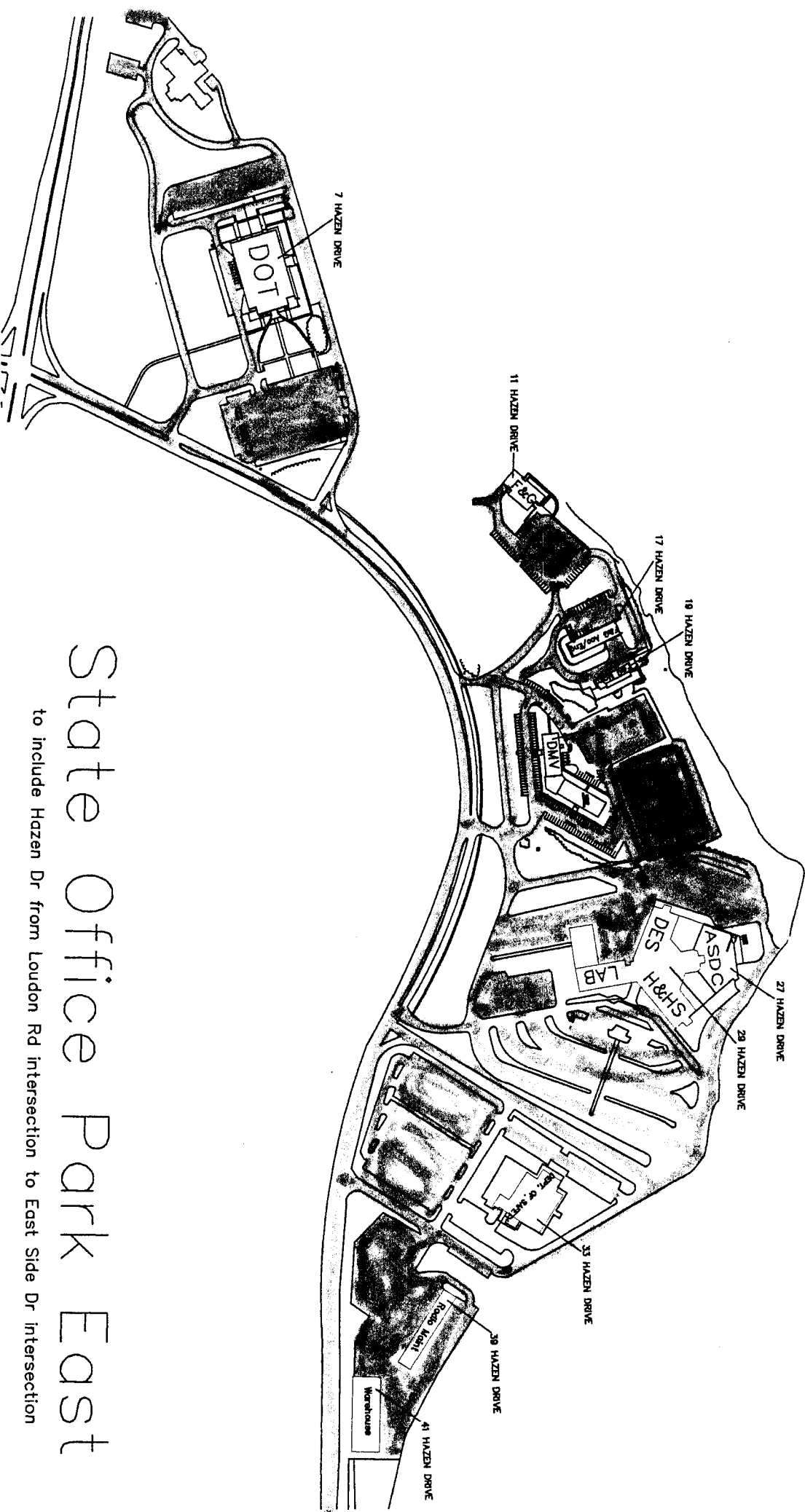
17. **AMENDMENT.** This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

18. **CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

19. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this agreement shall not be construed to confer any such benefit.

20. **SPECIAL PROVISIONS.** The additional provisions set forth in EXHIBIT C hereto are incorporated as part of this Agreement.

21. **ENTIRE AGREEMENT.** This agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.



State Office Park East

to include Hazen Dr from Loudon Rd intersection to East Side Dr intersection